

1 UNITED STATES DISTRICT COURT

2 EASTERN DISTRICT OF WASHINGTON

3  
4  
5 BRIAN ZAHN,

6 Plaintiff,

7 v.

8  
9 BRIAN APPLEBURY, et al.,

10 Defendants.

No. CV-05-371-FVS

11 ORDER

12       **THIS MATTER** comes before the Court for resolution of three  
13 motions. The plaintiff is representing himself. The defendants are  
14 represented by Assistant United States Attorney Frank W. Wilson.

15       **BACKGROUND**

16       On or about January 8, 2001, the U.S. Army Corps of Engineers  
17 ("the Corps") discharged Brian Zahn. He alleges that the Corps'  
18 stated reasons for discharging him were not its actual reasons; that,  
19 in fact, he was discharged in retaliation for engaging in protected  
20 activity. He alleges that he pursued his administrative remedies, but  
21 that, on March 31, 2003, the Corps issued a final decision discharging  
22 him. On November 30, 2005, he lodged a complaint with the District  
23 Court Executive. He sought relief under Section 1 of the Civil Rights  
24 Act of 1871, Rev.Stat. § 1979, now codified as 42 U.S.C. § 1983, the  
25 Americans with Disabilities Act ("ADA"), 42 U.S.C. § 12101 *et seq.*,  
26 the Family Medical Leave Act ("FMLA"), 29 U.S.C. § 2601 *et seq.*, and  
the State of Washington's Law Against Discrimination ("WLAD"), RCW

1 49.60. On March 28, 2007, the Court ordered the United States  
2 Marshals Service to serve Mr. Zahn's complaint. On February 7, 2007,  
3 the Court ruled that Mr. Zahn's claims for relief under 42 U.S.C. §  
4 1983, the ADA, the FMLA, and the WLAD are barred by the relevant  
5 statutes of limitations. Mr. Zahn moves the Court to reconsider. The  
6 defendants move the Court to dismiss any remaining claims.

7 **RULING**

8 Mr. Zahn was a federal employee. As a result, he may not seek  
9 judicial relief under 42 U.S.C. § 1983, the ADA, the FMLA, or state  
10 law. See *Russell v. United States Dept. of the Army*, 191 F.3d 1016,  
11 1018-20 (9th Cir.1999); *Hiler v. Brown*, 177 F.3d 542, 544 n.4 (6th  
12 Cir.1999). The only relief he may seek in federal court is that which  
13 is provided by Title VII of the Civil Rights Act of 1964 ("Title  
14 VII"), 42 U.S.C. § 2000e-2 *et seq.*, and the Rehabilitation Act of  
15 1973, 29 U.S.C. § 701 *et seq.* *Vinieratos v. United States*, 939 F.2d  
16 762, 773 (9th Cir.1991). To date, Mr. Zahn has not sought relief  
17 under either statute. Moreover, as the record now stands, it is  
18 unclear whether any claim he might seek leave to file would be timely.  
19 42 U.S.C. § 2000e-16(c); 29 C.F.R. § 1614.407. See also *Colbert v.*  
20 *Potter*, 471 F.3d 158, 165-67 (D.C.Cir.2006). In view of the  
21 uncertainty, Mr. Zahn will be given an opportunity to amend his  
22 complaint to allege violations of Title VII and/or the Rehabilitation  
23 Act. See *Balistreri v. Pacifica Police Dep't*, 901 F.2d 696, 701 (9th  
24 Cir.1990) (under Rule 12(b)(6), a complaint may not be dismissed  
25 unless it appears beyond doubt that the plaintiff can prove no set of  
26 facts in support of his claim which would entitle him to relief).

1 However, Mr. Zahn shall not file an amended complaint unless he can  
2 make the certification required by Federal Rule of Civil Procedure  
3 11(b). If he files an amended complaint, the defendants shall respond  
4 as provided by the Federal Rules of Civil Procedure.

5 **IT IS HEREBY ORDERED:**

6 1. Mr. Zahn's motion for reconsideration (**Ct. Rec. 57**) is denied.

7 2. Mr. Zahn's request for leave to commence an interlocutory  
8 appeal (**Ct. Rec. 55**) is denied.

9 3. The defendants' motion to dismiss (**Ct. Rec. 61**) is granted in  
10 part and denied in part. Except for potential claims arising under  
11 either Title VII or the Rehabilitation Act, all of Mr. Zahn's claims  
12 are dismissed.

13 4. Mr. Zahn may have until May 23, 2007, in which to file an  
14 amended complaint asserting claims for relief under Title VII and/or  
15 the Rehabilitation Act. If Mr. Zahn chooses not to file an amended  
16 complaint, his existing complaint will be dismissed and the case  
17 closed.

18 5. Mr. Zahn shall not file an amended complaint unless he can  
19 make the certification required by Rule 11(b).

20 **IT IS SO ORDERED.** The District Court Executive is hereby  
21 directed to enter this order and furnish copies to Mr. Zahn and to  
22 counsel for the defendant.

23 **DATED** this 25th day of April, 2007.

24 \_\_\_\_\_  
25 s/ Fred Van Sickle  
26 Fred Van Sickle  
United States District Judge